

Calendar No. 166

104TH CONGRESS
1ST SESSION

S. 895

[Report No. 104-129]

A BILL

To amend the Small Business Act to reduce the level of participation by the Small Business Administration in certain loans guaranteed by the Administration, and for other purposes.

AUGUST 5 (legislative day, JULY 10), 1995

Reported with an amendment

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To amend the Small Business Act to reduce the level of participation by the Small Business Administration in certain loans guaranteed by the Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 8 (legislative day, JUNE 5), 1995

Mr. BOND (for himself, Mr. BUMPERS, Mr. WELLSTONE, Mr. BURNS, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Small Business

AUGUST 5 (legislative day, JULY 10), 1995

Reported by Mr. BOND, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the Small Business Act to reduce the level of participation by the Small Business Administration in certain loans guaranteed by the Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Lend-
3 ing Enhancement Act of 1995”.

4 **SEC. 2. REDUCED LEVEL OF PARTICIPATION IN GUARAN-
5 TEED LOANS.**

6 Section 7(a)(2) of the Small Business Act (15 U.S.C.
7 636(a)(2)) is amended to read as follows:

8 “(2) LEVEL OF PARTICIPATION IN GUARAN-
9 TEED LOANS.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), in an agreement to partici-
12 pate in a loan on a deferred basis under this
13 subsection (including a loan made under the
14 Preferred Lenders Program), such participation
15 by the Administration shall be equal to—

16 “(i) 75 percent of the balance of the
17 financing outstanding at the time of dis-
18 bursement of the loan, if such balance ex-
19 ceeds \$100,000; or

20 “(ii) 80 percent of the balance of the
21 financing outstanding at the time of dis-
22 bursement of the loan, if such balance is
23 less than or equal to \$100,000.

24 “(B) REDUCED PARTICIPATION UPON RE-
25 QUEST.—

1 “(i) ~~IN GENERAL.~~—The guarantee
2 percentage specified by subparagraph (A)
3 for any loan under this subsection may be
4 reduced upon the request of the participat-
5 ing lender.

6 “(ii) ~~PROHIBITION.~~—The Administra-
7 tion shall not use the guarantee percentage
8 requested by a participating lender under
9 clause (i) as a criterion for establishing
10 priorities in approving loan guarantee re-
11 quests under this subsection.

12 ~~“(C) INTEREST RATE UNDER PREFERRED~~
13 ~~LENDERS PROGRAM.—~~

14 “(i) ~~IN GENERAL.~~—The maximum in-
15 terest rate for a loan guaranteed under the
16 Preferred Lenders Program shall not ex-
17 ceed the maximum interest rate, as deter-
18 mined by the Administration, applicable to
19 other loans guaranteed under this sub-
20 section.

21 “(ii) ~~PREFERRED LENDERS PROGRAM~~
22 ~~DEFINED.~~—For purposes of this subpara-
23 graph, the term ‘Preferred Lenders Pro-
24 gram’ means any program established by
25 the Administrator, as authorized under the

1 proviso in section 5(b)(7), under which a
 2 written agreement between the lender and
 3 the Administration delegates to the lend-
 4 er—

5 “(I) complete authority to make
 6 and close loans with a guarantee from
 7 the Administration without obtaining
 8 the prior specific approval of the Ad-
 9 ministration; and

10 “(II) authority to service and liq-
 11 uidate such loans.”.

12 **SEC. 3. GUARANTEE FEES.**

13 (a) **AMOUNT OF FEES.**—Section 7(a)(18) of the
 14 Small Business Act (15 U.S.C. 636(a)(18)) is amended
 15 to read as follows:

16 “(18) **GUARANTEE FEES.**—With respect to each
 17 loan guaranteed under this subsection (other than a
 18 loan that is repayable in 1 year or less), the Admin-
 19 istration shall collect a guarantee fee, which shall be
 20 payable by the participating lender and may be
 21 charged to the borrower, in an amount equal to the
 22 sum of—

23 “(A) 3 percent of the amount of the de-
 24 ferred participation share of the loan that is
 25 less than or equal to \$250,000;

1 “(B) if the deferred participation share of
2 the loan exceeds \$250,000, 4 percent of the dif-
3 ference between—

4 “(i) \$500,000 or the total deferred
5 participation share of the loan, whichever
6 is less; and

7 “(ii) \$250,000; and

8 “(C) if the deferred participation share of
9 the loan exceeds \$500,000, 5 percent of the dif-
10 ference between—

11 “(i) the total deferred participation
12 share of the loan; and

13 “(ii) \$500,000.”.

14 (b) REPEAL OF PROVISIONS ALLOWING RETENTION
15 OF FEES BY LENDERS.—Section 7(a)(19) of the Small
16 Business Act (15 U.S.C. 636(a)(19)) is amended—

17 (1) in subparagraph (B)—

18 (A) by striking “shall (i) develop” and in-
19 serting “shall develop”; and

20 (B) by striking “, and (ii)” and all that
21 follows through the end of the subparagraph
22 and inserting a period; and

23 (2) by striking subparagraph (C).

1 **SEC. 4. ESTABLISHMENT OF ANNUAL FEE.**

2 (a) ~~IN GENERAL.~~—Section 7(a) of the Small Busi-
3 ness Act (15 U.S.C. 636(a)) is amended by adding at the
4 end the following new paragraph:

5 “(23) ~~ANNUAL FEE.~~—In carrying out this sub-
6 section, the Administration shall, in accordance with
7 such terms and procedures as the Administration
8 shall establish by regulation, assess and collect an
9 annual fee, which shall be payable by the participat-
10 ing lender, in an aggregate amount equal to not
11 more than 0.4 percent of the outstanding balance of
12 the deferred participation share of the loan.”.

13 (b) ~~CONFORMING AMENDMENT.~~—Section 5(g)(4)(A)
14 of the Small Business Act (15 U.S.C. 634(g)(4)(A)) is
15 amended—

16 (1) by striking the first sentence and inserting
17 the following: “The Administration may collect a fee
18 for any loan guarantee sold into the secondary mar-
19 ket under subsection (f) in an amount equal to not
20 more than 50 percent of the portion of the sale price
21 that exceeds 110 percent of the outstanding prin-
22 cipal amount of the portion of the loan guaranteed
23 by the Administration.”; and

24 (2) by striking “fees” each place such term ap-
25 pears and inserting “fee”.

1 **SEC. 5. TECHNICAL AMENDMENT.**

2 Section 3 of the Small Business Act (15 U.S.C. 632)
3 is amended by adding at the end the following new sub-
4 section:

5 “(o) **PARTICIPATING LENDER.**—For purposes of this
6 Act, the term ‘participating lender’ means any bank or
7 other financial institution that enters into an agreement
8 with the Administration described section 7(a) to provide
9 financing in accordance with that section.”.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Small Business Lending*
12 *Enhancement Act of 1995”.*

13 **SEC. 2. REDUCED LEVEL OF PARTICIPATION IN GUARAN-**
14 **TEED LOANS.**

15 *Section 7(a)(2) of the Small Business Act (15 U.S.C.*
16 *636(a)(2)) is amended to read as follows:*

17 “(2) **LEVEL OF PARTICIPATION IN GUARANTEED**
18 **LOANS.**—

19 “(A) **IN GENERAL.**—Except as provided in
20 subparagraph (B), in an agreement to partici-
21 pate in a loan on a deferred basis under this
22 subsection (including a loan made under the
23 Preferred Lenders Program), such participation
24 by the Administration shall be equal to—

25 “(i) 75 percent of the balance of the fi-
26 nancing outstanding at the time of dis-

1 *bursement of the loan, if such balance ex-*
 2 *ceeds \$100,000; or*

3 *“(ii) 80 percent of the balance of the fi-*
 4 *nancing outstanding at the time of dis-*
 5 *bursement of the loan, if such balance is less*
 6 *than or equal to \$100,000.*

7 *“(B) REDUCED PARTICIPATION UPON RE-*
 8 *QUEST.—*

9 *“(i) IN GENERAL.—The guarantee per-*
 10 *centage specified by subparagraph (A) for*
 11 *any loan under this subsection may be re-*
 12 *duced upon the request of the participating*
 13 *lender.*

14 *“(ii) PROHIBITION.—The Administra-*
 15 *tion shall not use the guarantee percentage*
 16 *requested by a participating lender under*
 17 *clause (i) as a criterion for establishing pri-*
 18 *orities in approving loan guarantee requests*
 19 *under this subsection.*

20 *“(C) INTEREST RATE UNDER PREFERRED*
 21 *LENDERS PROGRAM.—*

22 *“(i) IN GENERAL.—The maximum in-*
 23 *terest rate for a loan guaranteed under the*
 24 *Preferred Lenders Program shall not exceed*
 25 *the maximum interest rate, as determined*

by the Administration, applicable to other loans guaranteed under this subsection.

“(ii) *PREFERRED LENDERS PROGRAM DEFINED.*—For purposes of this subparagraph, the term ‘Preferred Lenders Program’ means any program established by the Administrator, as authorized under the proviso in section 5(b)(7), under which a written agreement between the lender and the Administration delegates to the lender—

“(I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and

“(II) authority to service and liquidate such loans.”.

SEC. 3. GUARANTEE FEES.

(a) *AMOUNT OF FEES.*—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended to read as follows:

“(18) *GUARANTEE FEES.*—

“(A) *IN GENERAL.*—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less),

1 the Administration shall collect a guarantee fee,
2 which shall be payable by the participating lend-
3 er and may be charged to the borrower, in an
4 amount equal to the sum of—

5 “(i) 2.5 percent of the amount of the
6 deferred participation share of the loan that
7 is less than or equal to \$250,000;

8 “(ii) if the deferred participation share
9 of the loan exceeds \$250,000, 3 percent of
10 the difference between—

11 “(I) \$500,000 or the total deferred
12 participation share of the loan, which-
13 ever is less; and

14 “(II) \$250,000; and

15 “(iii) if the deferred participation
16 share of the loan exceeds \$500,000, 3.5 per-
17 cent of the difference between—

18 “(I) \$750,000 or the total deferred
19 participation share of the loan, which-
20 ever is less; and

21 “(II) \$500,000.

22 “(B) EXCEPTION FOR CERTAIN LOANS.—
23 Notwithstanding subparagraph (A), if the total
24 deferred participation share of a loan guaranteed
25 under this subsection is less than or equal to

1 \$80,000, the guarantee fee collected under sub-
2 paragraph (A) shall be in an amount equal to
3 2 percent of the total deferred participation
4 share of the loan.

5 “(C) DISCRETIONARY INCREASE.—Notwith-
6 standing subparagraphs (A) and (B), during the
7 90-day period beginning on the first day of any
8 fiscal year, the Administration may increase the
9 guarantee fee collected under this paragraph by
10 an amount not to exceed 0.375 percent of the
11 total deferred participation share of the loan, if
12 the Administration—

13 “(i) determines that such action is nec-
14 essary to meet projected borrower demand
15 for loans under this subsection during that
16 fiscal year, based on the subsidy cost of the
17 loan program under this subsection and
18 amounts provided in advance for such pro-
19 gram in appropriations Acts; and

20 “(ii) not less than 15 days prior to im-
21 posing any such increase, notifies the Com-
22 mittees on Small Business of the Senate
23 and the House of Representatives of the de-
24 termination made under clause (i).”.

1 (b) *REPEAL OF PROVISIONS ALLOWING RETENTION OF*
 2 *FEES BY LENDERS.*—Section 7(a)(19) of the Small Busi-
 3 ness Act (15 U.S.C. 636(a)(19)) is amended—

4 (1) in subparagraph (B)—

5 (A) by striking “shall (i) develop” and in-
 6 serting “shall develop”; and

7 (B) by striking “, and (ii)” and all that fol-
 8 lows through the end of the subparagraph and
 9 inserting a period; and

10 (2) by striking subparagraph (C).

11 ***SEC. 4. ESTABLISHMENT OF ANNUAL FEE.***

12 (a) *IN GENERAL.*—Section 7(a) of the Small Business
 13 Act (15 U.S.C. 636(a)) is amended by adding at the end
 14 the following new paragraph:

15 “(23) *ANNUAL FEE.*—

16 “(A) *IN GENERAL.*—With respect to each
 17 loan guaranteed under this subsection, the Ad-
 18 ministration shall, in accordance with such
 19 terms and procedures as the Administration
 20 shall establish by regulation, assess and collect
 21 an annual fee in an amount equal to 0.5 percent
 22 of the outstanding balance of the deferred par-
 23 ticipation share of the loan.

24 “(B) *PAYER.*—The annual fee assessed
 25 under subparagraph (A) shall be payable by the

1 *participating lender and shall not be charged to*
 2 *the borrower.”.*

3 **(b) CONFORMING AMENDMENT.**—Section 5(g)(4)(A) of
 4 *the Small Business Act (15 U.S.C. 634(g)(4)(A)) is amend-*
 5 *ed—*

6 *(1) by striking the first sentence and inserting*
 7 *the following: “The Administration may collect a fee*
 8 *for any loan guarantee sold into the secondary market*
 9 *under subsection (f) in an amount equal to not more*
 10 *than 50 percent of the portion of the sale price that*
 11 *exceeds 110 percent of the outstanding principal*
 12 *amount of the portion of the loan guaranteed by the*
 13 *Administration.”; and*

14 *(2) by striking “fees” each place such term ap-*
 15 *pears and inserting “fee”.*

16 **SEC. 5. NOTIFICATION REQUIREMENT.**

17 **(a) IN GENERAL.**—Section 7(a) of the Small Business
 18 *Act (15 U.S.C. 636(a)) is amended by adding at the end*
 19 *the following new paragraph:*

20 **“(24) NOTIFICATION REQUIREMENT.**—The Ad-
 21 *ministration shall notify the Committees on Small*
 22 *Business of the Senate and the House of Representa-*
 23 *tives not later than 15 days before making any sig-*
 24 *nificant policy or administrative change affecting the*
 25 *operation of the loan program under this subsection.”.*

1 **SEC. 6. DEVELOPMENT COMPANY DEBENTURES.**

2 *Section 503(b) of the Small Business Investment Act*
3 *of 1958 (15 U.S.C. 697(b)) is amended—*

4 *(1) in paragraph (5), by striking “and” at the*
5 *end;*

6 *(2) in paragraph (6), by striking the period at*
7 *the end and inserting “; and”; and*

8 *(3) by adding at the end the following new para-*
9 *graph:*

10 *“(7) with respect to each loan made from the*
11 *proceeds of such debenture, the Administration—*

12 *“(A) assesses and collects a fee, which shall*
13 *be payable by the borrower, in an amount equal*
14 *to 0.0625 percent per year of the outstanding*
15 *balance of the loan; and*

16 *“(B) uses the proceeds of such fee to offset*
17 *the cost (as such term is defined in section 502*
18 *of the Federal Credit Reform Act of 1990) to the*
19 *Administration of making guarantees under sub-*
20 *section (a).”.*